

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID MABEUS,

Petitioner,

v.

9:16-CV-1141
(GTS/DJS)

JOHN COLVIN, Superintendent, Five Points
Corr. Fac.,

Respondent.

APPEARANCES:

OF COUNSEL:

DAVID MABEUS, 04-A-4840
Petitioner, *Pro Se*
Five Points Correctional Facility
Caller Box 119
Romulus, New York 14541

HON. BARBARA UNDERWOOD
Attorney General for the State of New York
Counsel for Respondent
28 Liberty Street
New York, New York 10005

MARGARET A. CIEPRISZ, ESQ.
Assistant Attorney General

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in his *habeas corpus* proceeding filed by David Mabeus (“Petitioner”) pursuant to 28 U.S.C. § 2254, is the Report-Recommendation of United States Magistrate Judge Daniel J. Stewart recommending that the Petition be denied and dismissed pursuant to 28 U.S.C. § 2253(c)(2), and that a certificate of appealability not issue. (Dkt. No. 19.) Petitioner has not filed an Objection to the Report-Recommendation, and the time in which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing all of the papers in this action, including Magistrate Judge

Stewart's thorough Report-Recommendation, the Court can find no clear error in that Report-Recommendation.¹ Magistrate Judge Stewart employed the proper legal standards, accurately recited the facts, and correctly applied the law to those facts. (Dkt. No. 19, Parts I-II.) As a result, the Court accepts and adopts Magistrate Judge Stewart's Report-Recommendation in its entirety for the reasons stated therein.

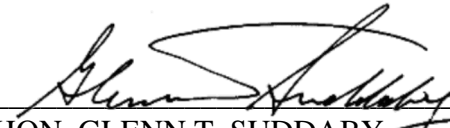
ACCORDINGLY, it is

ORDERED that Magistrate Judge Stewart's Report-Recommendation (Dkt. No. 19) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that the Petition (Dkt. No. 1) in this matter is **DENIED** and **DISMISSED**; and it is further

ORDERED that a certificate of appealability not issue with respect to any of the claims set forth in the Petition because Petitioner has not made a "substantial showing of the denial of a constitutional right" pursuant to 28 U.S.C. § 2253(c)(2).

Dated: September 11, 2018
Syracuse, New York


HON. GLENN T. SUDDABY
Chief United States District Judge

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).